

IMPLEMENTING AGREEMENT
BETWEEN THE DEPARTMENT OF ECOLOGY
AND THE DEPARTMENT OF TRANSPORTATION
CONCERNING HAZARDOUS WASTE MANAGEMENT

I. Purpose

This Implementing Agreement is being adopted pursuant to the Memorandum of Understanding, between the Washington State Department of Ecology (Ecology) and the Washington State Department of Transportation (DOT), dated August 4, 1988. This implementing agreement concerns hazardous waste management and reduction, site remediation, and regulatory compliance. The Agencies agree to cooperate in carrying out their statutory responsibilities to meet state transportation requirements and protect public health and safety and the natural environment. This agreement sets forth procedures for each agency to follow in reaching its goals and objectives.

II. Background

Activities of the DOT can be impacted by hazardous waste contamination through property acquisition, project development, construction, maintenance, and operation of the highway and ferry systems.

Past uses of property acquired for construction may have caused contamination which places statutory responsibilities for remedial actions on DOT and past, and possibly, future owners. State laws and regulations require that certain actions be taken to deal with contamination and potential threats to public health, safety, and the environment. Also, DOT uses hazardous substances and generates hazardous wastes in some of its activities. These materials have the potential to harm human health and the environment if managed improperly.

Ecology has the responsibility to carry out the provisions of the state Model Toxics Control Act and implementing regulations to see that contaminated areas are remediated in an appropriate and timely manner. Ecology is also responsible for assuring implementation of the state Hazardous Waste Management Act and Hazardous Waste Reduction Act, which are intended to reduce the use and generation of hazardous materials and to insure their proper management. It is in the interests of DOT and Ecology that the procedures and commitments that the Agencies will follow to ensure compliance with hazardous waste laws and regulations, be clearly identified.

The following sections describe specific procedures to be followed by the Agencies.

III. General Commitments

- DOT 1. DOT commits itself to full compliance with hazardous waste management and clean up laws and regulations promulgated thereunder. DOT recognizes the benefit in reducing the use, and recycling, of hazardous substances, and will be incorporating the concepts of reduction and recycling in their operations and pollution prevention planning.
- DOT 2. If DOT acquires a contaminated site during the conduct of its business, it will notify Ecology and take the necessary and appropriate steps to identify and clean up the hazardous waste contamination.
- Ecology 3. Ecology recognizes that in addition to environmental protection, there is a public interest to be served by constructing and maintaining transportation systems.
- Joint 4. Ecology will assist DOT to eliminate hazardous waste contamination by providing informal advice and assistance during the development of remedial actions, in a timely manner and pursuant to WAC 173-340-130. Both parties understand that this advice and assistance is advisory, and not binding on either party. DOT understands that if it seeks formal report approval or release of further potential liability it must be done pursuant to an order or consent decree.
- Joint 5. Ecology will send an early notice letter to all persons, identified with the assistance of DOT, who may be liable for cleanup costs. In the early notice letter, Ecology will state that independent cleanup is a possible option, and will encourage the recipient of the letter to contact DOT regarding independent cleanup. This notice will occur upon Ecology making a decision that further action is required at a site based on information acquired during the initial investigation, and prior to a DOT-conducted independent cleanup action.
- Joint 6. If DOT conducts an independent cleanup, the actions involved in the cleanup are not an admission of liability on DOT's part, nor shall they be construed as an admission of liability by Ecology.
- Joint 7. The parties will consider entering into a prepayment agreement if DOT: 1) has a site (or several sites) which is not prioritized for immediate action by Ecology; and 2) wants to conduct a cleanup action under Ecology's formal advice and oversight. Ecology has adopted *Policy 500 Prepaid Cleanup Oversight* which outlines the requirements and limitations of such an agreement.

DOT 8. DOT may request an order or consent decree from Ecology when DOT is going to seek cleanup cost recovery from other parties. Ecology will review such requests and respond per WAC 173-340-520 and WAC 173-340-530.

Ecology 9. Ecology will provide DOT with technical assistance to prevent and eliminate hazardous waste contamination by the reduction and recycling of hazardous substances.

IV. Location, Design, Acquisition

DOT 1. DOT will conduct environmental site assessments of all property involved in right of way (ROW) acquisition for the purpose of discovering possible hazardous waste contamination requiring remedial action. The scope of the site assessments will vary based upon past uses of the property and other factors.

DOT 2. If DOT acquires a contaminated site during the conduct of its business, it will report the discovery to the appropriate Ecology regional office.

Ecology 3. Ecology will conduct initial investigations for releases or contaminated sites reported by DOT pursuant to Section IV(2.) above. If Ecology determines that further action is required, it will send an early notice letter to the designated DOT staff contact for this agreement. If no further action is required, Ecology will notify DOT in writing of its determination.

Ecology 4. Ecology will provide informal advice and assistance as noted in Section III(4.) regarding administrative options for remedial action available to DOT.

Joint 5. In cases regarding an order or consent decree, or when it has been determined that negotiations will be mutually beneficial, the Parties will negotiate clean-up milestones for a contaminated site which will be compatible with proposed project development, to the extent practicable.

Ecology 6. Upon completion of a cleanup action, DOT may submit a petition to Ecology requesting the site to be removed from the Hazardous Sites List. Ecology will provide a timely review of any such petition, as resources permit, recognizing proposed transportation project schedules. Ecology may require payment of costs incurred for review and verification of the work performed as per WAC 173-340-330(4)(b).

Ecology 7. Ecology will provide available information regarding preliminary assessment and site inspection, remedial investigation, feasibility study, remedial action plan, and/or operation and maintenance activity. These steps may be included in a resource handbook made available by Ecology.

Ecology 8. Ecology will coordinate public involvement, participation, and comment on cleanups conducted under a Model Toxics Control Act (MTCA) order or consent decree. DOT recognizes the value of public participation and will cooperate and support these participatory activities.

V. Construction

Ecology 1. Both parties recognize that unanticipated contamination problems may be identified during a construction project. Ecology will provide informal advice and assistance as noted in section III(4) of this agreement.

Joint 2. If an unanticipated leaking underground storage tank (LUST) is encountered during a construction project, DOT will utilize guidance found in Ecology's *Guidance for Remediation of Releases from Underground Storage Tanks*. Ecology will provide informal technical assistance in the use of this publication.

DOT 3. DOT may proceed with an expedited independent clean-up on a portion of a contaminated site which adversely affects a construction schedule.

DOT 4. Prior to conducting an independent clean-up DOT will prepare a technical report. This report will address the environmental impact of partial remediation and/or interim actions and the potential of the construction to exacerbate future remediation of the site. The scope of the report will vary depending upon factors including extent of construction, scope of the construction project, and associated time constraints. DOT may seek informal technical advice and assistance from Ecology as per section III(4.) of this agreement before proceeding with a partial remediation.

DOT 5. If there is an imminent threat to public health or the environment due to site contamination, DOT will utilize resources such as an on-call hazardous waste contractor to stabilize the situation. DOT will notify Ecology of such discovery and stabilization actions immediately.

DOT 6. DOT will seek to minimize the use and generation of hazardous materials in its construction activities and those of its contractors to the extent practicable.

Ecology 7. Ecology will provide information and technical assistance on waste reduction and recycling with respect to construction activities.

VI. Operations and Property Management

DOT 1. DOT will conduct hazardous waste audits of its buildings and facilities on a regular basis to meet and maintain the department's commitment for full regulatory compliance, to the extent practicable. DOT will identify opportunities for hazardous substance reduction and recycling, especially in terms of product specifications.

Ecology 2. Ecology will provide technical assistance to DOT in its development of a capital facility audit program. This assistance will consist of reviewing and commenting on audit program documents.

DOT 3. DOT will follow the State of Washington manifest requirements when manifesting hazardous wastes. DOT will designate an appropriate official at each generating station authorized to sign and comply with the manifest procedure required by WAC 173-303-220.

DOT 4. DOT will maintain a program oversight function within its own agency to ensure continued compliance with all applicable regulations.

DOT 5. If DOT discovers contamination at one of its capital facilities, DOT will report the discovery to the appropriate Ecology regional office.

Ecology 6. Ecology will inform DOT of its intent to place a DOT maintenance facility, or other facility under DOT's ownership, on the Hazardous Sites List. DOT shall be notified prior to publication of the site in the Toxics Cleanup Program Site Register.

VII. Oil and Hazardous Substances Spills

DOT 1. When a spill occurs on, or impacts a state highway, DOT, as a part of a response team, will help coordinate traffic and secure the area of a hazardous substance spill to avoid unnecessary traffic problems.

DOT 2. DOT personnel will be trained to report hazardous substance spills to appropriate authorities.

- DOT 3. When a spill occurs on, or impacts a state highway, and where appropriate equipment is available and Health/Safety regulations can be complied with, DOT will respond to minor oil spills and will coordinate with the State Patrol, the State Office of Emergency Management, and local responders.
- DOT 4. DOT will follow the State of Washington requirements for reporting, response, cleanup and disposal of oil and hazardous materials as outlined by Chapters 90.48 RCW (Water Pollution), 90.56 RCW (Oil and Hazardous Substances Spill Prevention and Response), and 70.105 (Hazardous Waste Management).
- Ecology 5. Ecology will provide assistance and guidance to DOT personnel, including training on spill response.

VIII. Training

- DOT 1. DOT will provide annual training on hazardous waste issues to its managers and field personnel.
- Joint 2. Ecology will participate with DOT in the development and presentation of appropriate training of DOT personnel. Conversely, DOT will participate with Ecology in the development and presentation of appropriate training of Ecology personnel. When training costs become an issue, these costs will be supported by the agency receiving the training. Training sessions will be offered a minimum of once a year and shall be consistent with the Government Options to Landfill Disposal (GOLD) Plan.

IX. Waste Minimization

- DOT 1. DOT is committed to meet the state goal to reduce the generation of hazardous waste by fifty percent by 1995, and will work with Ecology in the development and implementation of programs and Pollution Prevention Plans pursuant to Chapter 70.95C RCW.
- Ecology 2. Ecology will provide technical assistance to DOT in the areas of waste reduction, reuse, recycling, and use of alternative (less hazardous) substances.
- DOT 3. DOT will work with the Washington State Departments of General Administration, and Trade and Economic Development, to identify alternatives to hazardous substances.

X. DOT Hazardous Waste Policy and Program

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| Ecology | 1. Ecology will review and comment on DOT's hazardous waste policies, environmental procedures manual, and program implementation activities, when requested by DOT. |
| Ecology | 2. Ecology will provide consultation to DOT concerning hazardous waste issues and programs. |
| Joint | 3. DOT and Ecology will publish and circulate their hazardous waste policies to the other agency. |
| Joint | 4. Ecology and DOT agree to designate staff contacts in each of their functional areas for coordination on hazardous waste issues and implementation of this agreement. Contacts will be established in each Ecology program and DOT division that are involved in hazardous waste issues. |
| Joint | 5. The parties to this agreement shall meet on an as needed and requested basis to enhance actions to meet hazardous waste policies and requirements. |

XI. Resolution of Concerns

It is expected that any conflicts arising in the implementation of this agreement will be resolved at the staff level. In the event that issues cannot be agreed upon by personnel at this level in a timely fashion, the parties agree to elevate the disputed issue through equivalent levels of each organization and, if necessary, to the Director of Ecology and Secretary of Transportation.

XII. Dealing with Violations

1. DOT takes the precautions necessary to prevent violations of hazardous waste laws and regulations during construction projects. These precautions include language written into contracts requiring contractors to comply with specific environmental laws and regulations, and conducting regular inspections of construction projects to ensure contract compliance. In the event of damages, and/or required restoration or rehabilitation, resulting from a violation by a contractor during a DOT construction project, the contractor shall be held responsible. In those cases involving enforcement actions under the Model Toxics Control Act, liability will be determined pursuant to this act.

2. If DOT is conducting the operation or activity with its own crews and equipment, DOT shall be held responsible for the violation. The Secretary shall take necessary action to avoid future violations.

XIII. Revisions

Revisions to this Implementing Agreement may be initiated by either Party and will become final after agreement by both parties and appropriate signatures are attached.

XIV. Duration

This Implementing Agreement will remain in effect until terminated. Either Party may terminate this Agreement upon 30-day written notice to the other. Written notice of termination shall include the reasons for the termination.

XV. Execution

The undersigned hereby acknowledge and agree that the policies, procedures, and activities identified in this document will guide the Parties in an effort of mutual support and cooperation in order that DOT and Ecology achieve full compliance in their designated activities, and initiate innovative strategies to protect Washington State's environment.

Washington State
Department of Ecology

by _____

Dan Silver, Assistant Director
Waste Management

Date _____

3/26/93

Approved as to form:

Assistant Attorney General
Ecology Division

Washington State
Department of Transportation

by _____

S.A. Moon
Deputy Secretary of Transportation

Date _____

4-1-93

Approved as to form:

Assistant Attorney General
Transportation Division

APPENDIX

1. REFERENCES

- A. Code of Federal Regulations, Parts 40, 42, and 49, *Hazardous Waste*
- B. Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- C. Superfund Amendments and Reauthorization Act (SARA)
- D. Federal Water Pollution Control Act (Clean Water Act)
- E. Resource Conservation and Recovery Act (RCRA)
- F. Federal Clean Air Act
- G. Federal Safe Drinking Water Act
- H. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

- I. Title 70, Revised Code of Washington, *Public Health and Safety*
- J. Chapter 70.105 RCW, Hazardous Waste Management Act
- K. Chapter 70.105D RCW, Model Toxics Control Act
- L. Chapter 70.95C RCW, Waste Reduction
- M. Chapter 173-303 WAC, Dangerous Waste Regulations
- N. Chapter 173-307 WAC, Pollution Prevention Plans
- O. Chapter 173-340 WAC, Cleanup Regulation
- P. Chapter 173-360 WAC, Underground Storage Tank (UST) Regulations

- Q. State Solid Waste Management Plan
- R. State Guide for Hazardous Waste Generators
- S. *Commercial Waste Reduction and Recycling Manual*, Department of Ecology Publication 90-36
- T. Ecology Booklet: *Washington Dangerous Waste Regulations and the Vehicle Maintenance Industry*
- U. *Environmental Procedures Manual*, Washington State Department of Transportation Publication M 31-11, Section 3-5
- V. *Guidance for Remediation of Releases from Underground Storage Tanks*, Department of Ecology Publication 91-30

- W. *The Government Options for Landfill Disposal (G.O.L.D.) Plan, A Strategy For Waste Reduction & Recycling At State Government Facilities, January 1991*
- X. *The G.O.L.D. Manual, Methods To Assist State Agencies & Institutions In The Development Of Waste Reduction & Recycling Plans, January 1991*
- Y. *Pollution Prevention Planning Guidance Manual for Chapter 173-307 WAC, Department of Ecology Publication 91-2*